INDEX.

CITATIONS.

IN THE

Supreme Court of the United States

No. _____

JAMES YATES, - - - - - - *Petitioner,*

v.

EDWARD BALL, - - - - - - *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review a judgment entered by the Supreme Court of Florida on November 29, 1946, reversing a judgment for $243,041.68 rendered in petitioner's favor by the Circuit Court of Duval County, Florida. Petitions for rehearing were finally denied on March 28, 1947.

OPINIONS BELOW.

Opinions of the Supreme Court of Florida, filed on November 29, 1946, February 28, 1947, and March 28, 1947, are reported in 29 So. (2d) 729, and are printed in the record at pages 763, 947.

BASIS OF JURISDICTION.

Jurisdiction is invoked under Section 237 of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Section 344).

Petitioner contends that the judgment of the Supreme Court of Florida hitherto mentioned is a final judgment of that Court; and that the Florida Supreme Court's denial of petitioner's petitions for rehearing, in which a claim of the denial of due process of law and equal protection of the laws under the 14th Amendment to the United States Constitution were specially set forth, necessarily determined adversely to petitioner the federal claims thus asserted.

The opinion of the Supreme Court of Florida was filed on November 29, 1946; petitioner filed petition for rehearing on December 27, 1946, and on February 1, 1947, filed a supplemental petition for rehearing and suggestion of disqualification. Suggestion of disqualification was overruled on February 28, 1947, and the several petitions for rehearing were denied on March 28, 1947 (R. 947). Application for stay of mandate pending application in this Court for writ of

certiorari was made on December 27, 1946, and order staying the mandate pending the application for writ of certiorari was entered on March 28, 1947 (R. 953).

QUESTIONS PRESENTED.

1. Is a litigant denied due process of law and the equal protection of the laws in violation of the 14th Amendment to the Federal Constitution when two judges of the state court rendering an adverse judgment have engaged in financial transactions with the litigant's successful adversary—transactions of such magnitude as to justify fear of their impartiality—when the majority required to render the adverse judgment necessarily included the challenged judges?

2. Where the highest court of a state has previously held that evidence was sufficient to permit a case to go to the jury, and thereafter the jury twice returns a verdict for petitioner, does the reversal by the highest state court of a judgment in petitioner's favor with directions to dismiss the case deny to petitioner the right of trial by jury, embodied in the 7th Amendment and incorporated in the due process clause of the 14th Amendment?

SUMMARY STATEMENT.

More than 15 years ago, petitioner, as trustee, brought an action against respondent on an oral contract to protect and pay bonds secured by a second mortgage on certain real estate. The trial court directed a verdict in respondent's favor. On appeal, the Supreme Court of Florida reversed, deciding that the issues were appropriate for determination by the jury. *Yates* v. *Ball,* 132 Fla. 132, 181 So. 341.

There was a second trial. Petitioner (the plaintiff) put in the same evidence as before. Defendant undertook primarily to deny the authority of the alleged agent who, according to petitioner's contention, acted for the respondent in making the contract. The jury returned a verdict in petitioner's favor. On appeal, the Supreme Court of Florida again reversed, holding that the case should go to another jury for trial of the issues of fact. *Ball* v. *Yates,* 145 Fla. 537, 200 So. 701.

Then came the third trial. Petitioner amended his declaration, in accordance with the second opinion of the Supreme Court of Florida, to eliminate any possible variance between pleading and proof (R. 87). This being done, petitioner put his case for the third time and respondent put his case for the second time. Again, the jury decided in petitioner's favor (R. 169). On appeal, the Supreme Court of Florida again reversed—inexplicably repudiating the law of the case established by its first opinion. *Ball* v. *Yates,* Fla. , 29 So. (2d) 729. Two of the seven judges dis-

sented. It is this reversal of which petitioner primarily complains. The Supreme Court of Florida in effect nonsuited petitioner, repudiating its previous decisions that the matters in controversy between petitioner and respondent were appropriate for determination by the jury.

After the Florida Supreme Court's decision, and while petition for rehearing was pending, petitioner for the first time ascertained the existence of certain financial transactions between two members of the Florida Supreme Court and corporations under respondent's control. These are the facts, unchallenged and indeed admitted by the two justices:

In 1944, Mr. Justice Rivers Buford, of the Florida Supreme Court, entered into a contract with the St. Joe Paper Company, of which respondent is president and in which he is the dominant influence, for the purpose of mining oil, gas and other minerals on a tract of 18,000 acres of land situated in Florida. By the terms of this agreement, Mr. Justice Buford and respondent's corporation became profit-sharers in these mineral leases, since the agreement provided that the yield from these operations should be divided between them on a royalty basis (R. 880).

Mr. Justice Alto Adams, of the Florida Supreme Court, ~~while the last appeal in the case at bar was pending before the Florida Supreme Court~~, borrowed $80,000 from the Florida National Bank of Jacksonville, of which two of respondent's counsel were directors and which respondent himself, individually and as a trustee of the Alfred I. duPont estate, controlled.

"shortly before the last appeal in the case at bar was filed",

Mr. Justice Adams states in response to the suggestion of disqualification that the indebtedness was paid prior to the hearing of the appeal in the instant case. However, after the opinion of the Florida Supreme Court was filed and prior to the disposition of petitioner's petitions for rehearing, Mr. Justice Adams borrowed $30,000 from the Florida Bank at Ft. Pierce, another one of the 18 banks controlled by the duPont estate, of which respondent is the dominant trustee. This indebtedness remains unpaid (R. 898).

Disavowing any bias, prejudice or partiality, Mr. Justice Buford and Mr. Justice Adams declined to recuse themselves. The Court, determining that the suggestion of disqualification was insufficient under the Florida statute to justify compulsory disqualification, overruled the suggestion, thereupon denying the petitions for rehearing (R. 942).

REASONS FOR GRANTING THE PETITION.

The Supreme Court of Florida has decided two important questions of constitutional law which have not been, but should be, settled by this Court:

1. The right to be heard before a disinterested court or tribunal is basic to the concept of procedural decency embodied in the 14th Amendment. *Tumey* v. *Ohio,* 273 U. S. 510, (1927); see *Jordan* v. *Massachusetts,* 225 U. S. 176, 179 (1912). This Court has previously held, in the *Tumey* case, that "an accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment

of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him." This Court has not, however, directly dealt with a civil case in which the tribunal's impartiality is tainted by financial transactions between judge and litigant. Certainly, all the considerations which underlie the other guarantees which this Court has held to be comprehended by the terms "due process of law" and "equal protection of the laws" are applicable to this case.

The issue is important. This court should decide it.

2. In *Hurtado* v. *California,* 110 U. S. 516, this Court held that the right of trial by jury, guaranteed against federal invasion by the 7th Amendment, was not guaranteed against state action by the 14th Amendment. For some time thereafter, this Court adhered to the view that none of the civil liberties protected by the first eight amendments against federal action were, by virtue of the 14th Amendment, protected against state action. Since that time, however, beginning with *Grosjean* v. *American Press Company,* 297 U. S. 233 (1936), this Court has recognized that the *Hurtado* case no longer stands; and that "certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process clause of the Fourteenth Amendment. . . ."

Whether these "fundamental rights" specifically include the right to trial by jury has never been specifically determined by this Court. The importance of the issue does not require extended argument.

WHEREFORE, it is respectfully submitted that this petition for certiorari to review the judgment of the Supreme Court of Florida should be granted.

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

OPINIONS BELOW.

The opinions below have been referred to in the petition for writ of certiorari under this same caption.

JURISDICTION.

The statement as to jurisdiction has been set forth in the petition.

STATEMENT OF THE CASE.

The facts have been stated in the Summary Statement contained in the petition.

SPECIFICATIONS OF ERROR.

1. The Supreme Court of Florida erred in holding that petitioner had been afforded a fair hearing before an impartial tribunal, as guaranteed by the due process and equal protection clauses of the 14th Amendment, despite the participation of Justices Buford and Adams in the consideration and decision of the case.

2. The Supreme Court of Florida erred in reversing the judgment of the lower court in petitioner's favor with directions to dismiss the case and in thereby holding that petitioner had been afforded his constitu-

tional right to a trial by jury, in accordance with the guarantees of due process of law contained in the 14th Amendment.

3. The Supreme Court of Florida erred in reversing the judgment of the Circuit Court of Duval County, and in denying petitioner's petition for rehearing and suggestion of disqualification.

ARGUMENT.

I. The Participation of Justices Buford and Adams in the Consideration and Decision of This Case Constituted Denial to Petitioner of Due Process of Law and the Equal Protection of the Laws in Violation of the 14th Amendment.

A. THE FACTS.

On February 1, 1947, petitioner filed in the Supreme Court of Florida a supplemental petition for rehearing and suggestion of disqualification of Justices Buford and Adams (R. 831). At page 16 of this document, petitioner states that he

> "alleges expressly and specifically and for the purpose of seeking a review in this case by the Supreme Court of the United States that the participation by Justices Buford and Adams in consideration and judgment of the court herein has operated to deny to the appellee due process of law and the equal protection of the laws in violation of Article XIV of the Amendments to the Constitution of the United States" (R. 846).

In support of his suggestion for disqualification, petitioner attached thereto, and incorporated by reference therein, an agreement entered into on April 10, 1944, between the St. Joe Paper Company and Mr. Justice Buford. Under this agreement, the St. Joe Paper Company leased to Mr. Justice Buford for mineral development more than 18,000 acres of land in Leon and Jefferson Counties in the State of Florida. At the time of this lease, the respondent, Edward Ball, was President of the St. Joe Paper Company. By this lease, the St. Joe Paper Company and Justice Buford became profit-sharers in the mining operations conducted upon the Company's land, it being thereby agreed that the yield therefrom would be divided in proportion between them on a royalty basis.

Justice Buford admitted the existence of the lease but stated that such transactions were not unusual since he was engaged in the oil business for patriotic and other reasons (R. 906).

In support of the suggestion of disqualification as to Justice Adams, the petitioner showed that, shortly before the last appeal in this case was filed, Justice Adams borrowed $80,000 from the Florida National Bank of Jacksonville (R. 888). The Florida National Bank is the parent bank of the eighteen banking institutions owned and controlled by the duPont estate, of which the respondent Ball is dominating and controlling trustee (R. 833). Ball's counsel of record in this case are directors of this parent bank. The loan to Justice Adams purported to be for one year, yet before it was due the debt was satisfied as

of record. Five days after the decision of the Supreme Court in this case, Justice Adams borrowed $30,000 from the Florida Bank of Ft. Pierce, another bank of the duPont chain (R. 898). This debt is still due and owing by Justice Adams.

There is no doubt that both Justice Buford and Justice Adams were heavily obligated to respondent Ball and his associates.[1] These facts alleged by the petitioner were not substantially denied by the two Justices in their statement filed in reply to the suggestion of disqualification (R. 904, 940). Both Justices refused to recuse themselves stating that they were conscious of no bias or prejudice.

Both Justice Buford and Justice Adams held with the majority in reversing the trial court. While that decision was rendered by a majority of five to two, it does not follow that had they recused themselves the petitioner's case would still have been reversed by three to two, since under the Constitution and Statutes of the State of Florida circuit judges would have been called in to replace them.

The Florida Constitution, Article 5, Section 4(b) provides that the circuit judges shall be at all times subject to call to the Supreme Court to act in the place

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[1]Justice Buford severely criticized a trial judge for sitting as judge in a case where it was shown that the trial judge would receive compensation if the defendant were convicted but no compensation if the defendant were acquitted. *Rollo* v. *Wiggins*, 5 So. (2d) 458 (1942).

In *State ex rel. Burton* v. *Barker*, 98 Fla. 273, 123 So. 738, the Florida Supreme Court held that a judge who was a depositor and creditor of a closed bank was disqualified to sit in a liquidation proceeding.

In *State ex rel., Parker* v. *Vosloh*, 53 N. E. (2d) 650 (1944), the Indiana Supreme Court held that a judge was interested and disqualified to act in an action involving an estate where it was shown that he was a debtor of that estate.

of any absent, disqualified or disabled justice. Article 5, Section 6, grants the Legislature power to prescribe regulations to do this and Section 25.08 of the Florida Statutes (1941) provides the manner of so doing.

In connection with the suggestion of disqualification, it should be noted that petitioner acted as soon as he discovered the facts concerning the financial transactions of Justices Buford and Adams with the respondent. In denying the petitioner's request for the disqualification of Justices Buford and Adams, the Supreme Court of Florida stated:

> "The policy of the law as expressed in the statutes is that suggestions of disqualification shall be filed before the trial and before decisions are rendered and in existence, unless the delay is excused by good cause shown" (R. 943).

This principle, while unexceptionable, has no application to the instant case, since petitioner declared on oath in connection with the suggestion of disqualification that the facts were not discovered until after the decision of the Florida Supreme Court had been rendered, and the time for filing petition for rehearing had expired (R. 852).

As soon as the transactions were discovered, the facts were called informally to the attention of the Court; and when the two justices declined to recuse themselves, suggestion of disqualification and supplemental petition for rehearing were then filed. This action was similar to that taken in certain cases in the United States Circuit Court of Appeals for the Second

Circuit, based upon the disqualification of Judge Manton. *Electric Auto-Lite Company* v. *P. & D. Mfg. Company*, 109 F. (2d) 566 (1940); *General Motors Corporation* v. *Preferred Electric & Wiring Corporation*, 109 F. (2d) 614 (1940).

B. THE PARTICIPATION OF JUDGES WHO WERE UNDER FINANCIAL OBLIGATION TO LITIGANT DENIED PETITIONER DUE PROCESS OF THE LAW AND EQUAL PROTECTION OF THE LAWS.

As this Court stated in *Buchalter* v. *New York*, 319 U. S. 427 (1943):

> "The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as 'the law of the land'."

Certainly, "the fundamental principles of liberty and justice which lie at the base of our civil and political institutions" imply the right to have one's cause tried before a tribunal free from bias or interest, and free from such financial or other obligation to litigants as might cast a cloud upon the tribunal's disinterested character.

In *Jordan* v. *Massachusetts*, 225 U. S. 176 (1912), this Court stated:

> "Due process implies a tribunal both impartial and mentally competent to afford a hearing."

In *Tumey* v. *Ohio*, 273 U. S. 510 (1927), the Court held that:

> "An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a substantial and pecuniary interest in reaching a conclusion against him."

In that case, the petitioner was convicted in a court where the magistrate was paid from a fund made up from fines imposed for misdemeanors. The principle, however, is one of decency and fair play; and cannot logically be limited to a situation in which the judge has a pecuniary interest in the outcome of the specific litigation. If the judge had in fact been bribed by a litigant, the case would be even stronger. Here, petitioner is faced not with a bribe but with financial transactions which cast doubt upon the disinterestedness of the two judges concerned. Conceding their honesty and their desire to mete even-handed justice, their relationship with the litigant and his interests was such as to make doubtful their ability to do so. Principles of fair play and decency which underlie the concept of due process of law and equal protection of the laws equally entitle the litigant to freedom from the more subtle and imponderable influences of direct financial obligation and indirect interest.

C. THE CONDUCT OF THE FLORIDA SUPREME COURT IN THIS CASE DEMONSTRATES THAT PETITIONER'S FEARS AS TO THE DISINTERESTEDNESS OF THE TRIBUNAL WERE JUSTIFIED.

When this case was first tried, the trial judge directed a verdict for respondent (defendant) at the close of petitioner's testimony. Judgment was entered for the respondent, and from this judgment petitioner appealed. The Florida Supreme Court reversed, holding squarely that petitioner's evidence established a case sufficient for submission to the jury. *Yates* v. *Ball,* 132 Fla. 132, 181 So. 341 (1938).

The case went to trial the second time. Petitioner introduced substantially the same evidence as in the original trial. Respondent then put on his evidence, consisting principally of denial of the authority of his agent to bind him to the contract in question. Thus, the principal question was one of fact: Was respondent's agent authorized to enter into the contract? On this and all other issues of fact, the jury returned a verdict in petitioner's favor; and the trial court entered judgment accordingly.

This time respondent appealed. In a second opinion, rendered *per curiam,* the Florida Supreme Court again reversed the trial court, granting petitioner leave to amend his declaration to make it conform with proof. *Ball* v. *Yates,* 145 Fla. 547, 200 So. 692 (1940).

Petitioner amended his declaration, and a third trial was held with substantially the same evidence as that presented in the second trial. Again the jury returned a judgment for the petitioner and the trial

court entered judgment accordingly. The respondent again appealed and the Florida Supreme Court again reversed, in the decision now complained of by the petitioner.

To make it clear that the Supreme Court of Florida did in its third opinion, repudiate almost every material ruling contained in its first opinion, we set forth in parallel columns excerpts from the two opinions on the principal points in the case:

Yates v. *Ball* (decided Oct. 13, 1937), 132 Fla. 132, 181 So. 341.	*Ball* v. *Yates* (decided Nov. 29, 1946), 29 So. (2d) 729.
Suttles' Agency.	
"There was ample showing of Suttles' authority to act for Ball.	"We are of the opinion that the evidence fails to establish facts sufficient to permit an inference that Suttles was the authorized agent of Ball.
"He (Ball) must have considered the agreement perfected and closed else he would not have expended so much in compliance with its terms on his part.	"And likewise it is not sufficient to establish ratification.

The Making of the Contract.

"The evidence shows that Suttles, as the authorized representative of Ball, negotiated with the second mortgage bondholders and made the agreement between them and Ball on which this action is grounded.

"Much of this evidence is confusing, some of it is immaterial, but our conclusion is that the essential elements of the contract declared on were proven, that Ball accepted its terms and that there was no material variance between the proof and the agreement."

"The evidence fails to support an enforcible contract between Ball and Marks prior to June 1, 1928, and likewise the evidence fails to establish ratification subsequent thereto."

In justifying this amazing departure from the law of the case, the court stated in its third opinion:

> "If there be any conflict between the law of the case as established by the first appeal with the law of the case as established by the second appeal, then and in that event the latter will control over the first" (R. 769).

This conflicts directly with the prevailing rule in Florida, as well as elsewhere, which holds that the law of the case is established upon the first appeal in an appellate court. *Provident Life & Accident Insurance Company* v. *Mathers,* 26 So. (2d) 814. See also *Family Loan Company* v. *Smetal Corporation,* 123 Fla. 900, 169 So. 48 (1936), in which the Florida Su-

preme Court had previously held that it was without authority, even if so inclined, to reverse principles of law theretofore decided as the law of the case.

Thus, it is plain that the participation of Justices Buford and Adams in the determination of this case by the Florida Supreme Court, under circumstances casting suspicion of disinterestedness of the tribunal, resulted in a decision completely at variance with the rules of law heretofore deemed established in the Courts of Florida. Such a result serves strongly to reinforce petitioner's contention that he is possessed of a constitutional right to have his cause determined by a court on which these two justices do not sit.

II. Right of Trial by Jury, as Embodied in the 7th Amendment to the Constitution, Guaranteed Against Infringement by the States Under the 14th Amendment; and the Florida Supreme Court Has Sanctioned a Denial of This Right.

A. THE RIGHT OF TRIAL BY JURY, AS EMBODIED IN THE 7TH AMENDMENT, IS PROTECTED AGAINST INFRINGEMENT BY THE STATES IN THE 14TH AMENDMENT.

At one time it was believed that the rights guaranteed against infringement by the federal government in the first eight amendments to the Constitution were not safeguarded against state action by the 14th Amendment. *Hurtado* v. *California*, 110 U. S. 516. This Court no longer accepts the older view. *Powell* v. *Alabama*, 287 U. S. 45 (1933). As this Court stated in *Grosjean* v. *American Press Company*, 297 U. S. 233 (1936):

"the sweeping language of the Hurtado case could not be accepted without qualification. We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment. . . ."

See also *Near* v. *Minnesota,* 283 U. S. 697 (1930); *Murdock* v. *Pennsylvania,* 319 U. S. 105 (1942); *Schneider* v. *Irvington,* 308 U. S. 147 (1939); *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940); *Prince* v. *Massachusetts,* 321 U. S. 296 (1944); *Thomas* v. *Collins,* 323 U. S. 516 (1945).

The right of trial by jury, as embodied in the 7th Amendment to the Constitution, is a fundamental right, regarded as a historic principle of Anglo-Saxon jurisprudence, of equal dignity with the freedoms of religion, press, speech and assembly which this Court has deemed to be included in the protections afforded by the 14th Amendment. As this Court stated in *Dimick* v. *Schiedt,* 293 U. S. 474 (1935):

"The right of trial by jury is of ancient origin, characterized by Blackstone as 'the glory of the English law' and 'the most transcendent privilege which any subject can enjoy' (Bk. 3, p. 379); and, as Justice Story said (2 Story, Const. Sec. 1779), '. . . the Constitution would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms.' With, perhaps, some exceptions, trial by jury has always been, and still is, generally regarded as the normal and preferable mode of dis-

posing of issues of fact in civil cases at law as well as in criminal cases. Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care. Compare Patton v. United States, 281 U. S. 276, 74 L. Ed. 854, 50 S. Ct. 253, 70 A. L. R. 263."

The Constitution of Florida provides in Section 6:

"That the right of trial by jury shall for ever remain inviolate."

This Court has never specifically held that the right of trial by jury, as embodied in the 7th Amendment, is included in the rights against invasion by the states in the 14th Amendment. Nevertheless, the logic of those cases which, departing from earlier doctrine, have held other fundamental, rights, procedural as well as substantive, up to be included is equally applicable to the right of trial by jury. The issue is plainly of sufficient importance to justify an authoritative determination by this Court in the light of recent decisions affecting the application of the due process clause.

B. THE DECISION OF THE FLORIDA SUPREME COURT DENIED PETITIONER THE RIGHT OF TRIAL BY JURY.

In two successive trials, the issue was squarely presented whether respondent, through his agent, had entered into a binding contract with petitioner. Twice the jury found, on this issue, in petitioner's favor.

In its third opinion, the Florida Supreme Court in effect determined that it believed respondent's witnesses rather than petitioner's.[2]

In accepting one version of the evidence as against another, the Florida Supreme Court invaded the province of the jury. *Lavender* v. *Kurn,* 327 U. S. 645 (1946). As this Court states in *Ellis* v. *Union Pacific Railroad Company,* U. S. , 91 L. Ed. 433, 436:

> "The choice of conflicting versions of the way the accident happened, the decision as to which witness was telling the truth, the inferences to be drawn from uncontroverted as well as controverted facts, are questions for the jury. (Citing cases.) Once there is a reasonable basis in the record for concluding that there was negligence which caused the injury, it is irrelevant that fair-minded men might reach a different conclusion. For then it would be an invasion of the jury's function for an appellate court to draw contrary inferences or to conclude that a different conclusion would be more reasonable. Lavender v. Kurn, *supra* (327 U. S., p. 652, 90 L. Ed. 922, 66 S. Ct. 740). And where, as here, the case turns on controverted facts and the credibility of witnesses, the case is peculiarly one for the jury. (Citing cases.)
>
> "We think the evidence raised substantial questions for the jury to determine and that there

[2]The Florida Supreme Court held in *Southern Express Company* v. *Stovall,* 75 Fla. 1: "A second verdict upon the same set of facts, even though the judges might come to a different conclusion, is too strongly fortified by the judgment of twelve men to warrant an appellate court in disturbing it except for strong reasons."

It is also interesting to know that in only one case in 100 years of statehood, the Florida Supreme Court presumed to overthrow the verdict of two juries on the same set of facts.

was a reasonable basis for the verdict which is returned."

See also *Patton* v. *United States*, 281 U. S. 276 (1930); *Glasser* v. *United States*, 315 U. S. 60 (1942); *Jacob* v. *City of New York*, 315 U. S. 752 (1942).

CONCLUSION.

It is therefore urged that the petition for writ of certiorari should be granted.

Respectfully submitted,

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